

In contrast, respondent contends the ALJ was correct in denying claimant benefits and the Appeals Board (Board) should affirm the ALJ's preliminary hearing Order. Respondent argues, although claimant injured her right foot on the respondent's premises, her injury is not compensable because of the deviation claimant made when she drove her personal car from her original parking space to a parking space next to her workplace for a personal errand instead of directly exiting the respondent's parking lot.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

In the parties' briefs, both agree that claimant injured her right foot as she stepped between the grates of a water drain located in a parking lot owned and controlled by respondent. The parties also agree that the injury occurred after claimant had left her employment duties and was on her way home.

An employee's accidental injury does not arise out of and in the course of the employment after the employee has left his or her duties of employment, if the proximate cause of such injury is not the employer's negligence. But if the employee is injured on the premises owned or controlled by the respondent or the employee is injured on the only available route to or from work involving a special hazard then the employee is not construed as having left his or her duties of employment.<sup>1</sup> In this case, instead of the claimant leaving work directly, she drove her car a few feet from one parking space to another parking space located next to her workplace to load some bowls and a cake pan. Claimant brought a cake and some food items in the bowl for a luncheon the department employees had over the lunch hour for a department supervisor who was leaving and to celebrate some of the department's employees' birthdays. Respondent argues that because claimant deviated from directly leaving the parking lot when she first got into her car to engage in a personal non-work related activity of loading the bowls and cake pan that claimant's injury did not arise out of and in the course of her employment.

The Board disagrees with respondent's argument. Claimant injured her right foot as she stepped between two grates of a water drain located in the parking space she had driven to a few feet from her original parking space in respondent's parking lot. If the injury would have occurred while claimant was getting into her car at the original parking place there would be no question that the premises exception to the "going and coming" rule would apply and claimant's right foot injury would have arose out of and in the course of her employment.<sup>2</sup>

Here, the Board concludes that the minor deviation that claimant made when she left and drove her car a few feet from her original parking place to another parking space does not constitute a significant deviation to remove claimant from the "premises"

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<sup>1</sup> See K.S.A. 44-508(f) and Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994).

<sup>2</sup> See Teague v. Boeing Airplane Co., 181 Kan. 434, 312 P.2d 220 (1957) (where the Kansas Supreme Court affirmed a district court's holding that the injuries suffered by an employee on her way to work as a result of falling on the ice in the employer's parking lot were compensable).

exception contained in the “going and coming” rule.<sup>3</sup> Furthermore, claimant’s activity in taking food to the office party for a departing worker was for the mutual benefit of the employee and the employer. Thus, the Board concludes claimant’s right foot injury arose out of and in the course of her employment with respondent.

**WHEREFORE**, it is, the finding, decision, and order of the Board that ALJ Nelsonna Potts Barnes’ September 27, 2001, preliminary hearing Order is reversed and remanded for the ALJ to address the issues of claimant’s request for medical treatment and payment of past medical expenses as an authorized medical expense.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2002.

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BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant  
Kim R. Martens, Attorney for Respondent  
Nelsonna Potts-Barnes, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

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<sup>3</sup> See Kindel v. Ferco Rental, Inc., 258 Kan. 272, 284, 899 P.2d 1058 (1995).